

REMARKS

In a communication dated October 6, 2003 the Examiner indicated that the amendment to the claims filed 1/7/2002 (aka the amendment mailed 11/5/2001) did not comply with the requirements of 37 CFR 1.121(c) because a marked up copy of amended claims 1, 4 and 5 was not submitted.

In a response to the communication dated October 6, 2003 that was filed November 6, 2003, Applicants noted that claims 1, 4 and 5 were not amended in the amendment to the claims filed 1/7/2002. Instead claims 1, 4 and 5 (and 7) were amended in a response to the restriction requirement that was filed on February 22, 2001. Because the response to the restriction requirement that was filed on February 22, 2001 did include a marked up copy of claims 1, 4 and 5 (and 7), this February 22, 2001 Amendment did comply with the requirements of 37 CFR 1.121(c). Applicants further noted that because the amendment to the claims filed 1/7/2002 did include a marked up copy of claims 7 and 9 (the two claims that were amended in this filing), this Amendment also complied with the requirements of 37 CFR 1.121(c). In hopes that it would further the prosecution of the instant Application, in their filing of November 6, 2004 Applicants provided a second marked up copy of amended claims 1, 4 and 5 and requested entry of these Amendments as first submitted in the response to the restriction requirement that was filed on February 22, 2001. The copy of amended claims 1, 4 and 5 that was submitted November 6, 2004 followed the post July 30, 2003 format for submission of claims amendments under 37 CFR 1.121(c). As this was a clarifying communication regarding an earlier amendment (and not an Amendment under 37 CFR 1.121), Applicants' attorney did not include a list of the cancelled claims.

The filing of the communication on November 6, 2003 resulted in our receipt of a second "Notice of a Non-compliant Amendment (37 CFR 1.121)" dated February 5, 2004. The Notice of a Non-compliant Amendment dated February 5, 2004 stated that the communication filed November 6, 2003 did not include a list of the cancelled claims.

Applicants respectfully point out that the communication filed November 6, 2003 was not an amendment under 37 CFR 1.121. However, in hopes that it will further the prosecution of the instant case, the instant communication is submitted in response to the Notice of a Non-compliant Amendment (37 CFR 1.121) dated February 5, 2004. The instant communication includes the current status of the claims in view of the response to the restriction requirement that was filed on February 22, 2001, and the Amendment that was filed on November 5, 2001. Applicants respectfully point out that all the previous papers were in fact submitted in compliance with the then pending

rules, and that applicant should not be prejudiced in any way in terms of patent term adjustment calculations for the PTO's handling of this matter.

It is submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Applicants' undersigned attorney.

Respectfully submitted,

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